

**United States Department of Labor
Employees' Compensation Appeals Board**

VICKIE BRUCKNER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coppell, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-403
Issued: April 14, 2004**

Appearances:
Vickie Bruckner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 3, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 15, 2003 denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

FACTUAL HISTORY

On July 11, 2003 appellant, then a 48-year-old clerk, filed a recurrence claim (Form CA-2a) alleging she sustained a recurrence of her accepted emotional condition when she had a confrontation with her supervisor.¹ Appellant previously filed an emotional claim that was diagnosed as an adjustment disorder with anxious mood.²

In a July 8, 2003 letter, appellant alleged that on July 3, 2003 she was approached by Supervisor Brian Wilson who got close to her face and spoke accusingly about an audit she was to have performed. Appellant stated that she felt like he was harassing her, causing her to visibly shake and to wonder if he was intentionally trying to upset her because he knew she had a stress claim. She stated that Mr. Wilson had previously accused her of not wanting to do her job in a hard and intimidating vocal tone. This confused her as Mr. Wilson had previously stated that she had the largest workload. Appellant went to the workers' compensation office to say she was upset and needed to take personal leave. She later walked by Mr. Wilson's office and he shouted at her that he needed to talk to her. When appellant responded that she was not up to it, Mr. Wilson insisted that they meet. Appellant then requested that Sherry Wilson, a coworker, be present, but Mr. Wilson refused her request and stated that he did not need anyone present to have an official discussion with her. He asked Carolyn Weisiger, the acting postmaster to join them. Appellant noted that she would like to continue working in her current position, but could not work with Mr. Wilson because his attitude and body language were intimidating and he was an unsafe manager.

The record contains a June 10, 2003 email from appellant which noted that due to an excessive workload she told Mr. Wilson that she could not do all her assigned work. Mr. Wilson allegedly responded by accusing her of not wanting to do her job and she became upset. Appellant added that she came to work early and ate her lunch at her desk and only wanted a fair workload because she did not want to be reinjured; noting that her hands were shaking as she wrote the email.

Appellant alleged that on June 10, 2003 Mr. Wilson came to her cubicle and wanted to know why she was not performing a scheduled audit. His body posture indicated that he was agitated, causing appellant to be upset. She was later called into Mr. Wilson's office and he explained that he was upset with other employees not her. Appellant stated that she then tried to defend one of the employees and was told not to get involved. She and Mr. Wilson then discussed her workload and her medical restrictions and Mr. Wilson stated that he would assign her timekeeping duties to another employee. In a June 23, 2003 email to Mr. Wilson, appellant inquired as to when her timekeeping duties would be taken away as this added to her heavy workload and only accounted for five percent of her performance. Appellant preferred to do only audits as they were more valuable to her at merit evaluation time.

¹ While appellant filed a recurrence claim, the case was properly adjudicated as a new injury.

² The case record does not contain the Office acceptance letter from her previous condition.

In an undated response to appellant's claim, Mr. Wilson stated that he did not raise his voice to appellant nor did he get close to her face. He disapproved of appellant taking personal leave because of the workload and that if she did take leave, she was to return with a note from her doctor. He stated that he called out appellant's name when she walked by but did not shout and that he preferred another manager be present when they met so as not to get appellant's coworkers involved. Mr. Wilson noted that appellant consistently argued that she was not receiving sufficient credit for the work she performed. He indicated that her job had no timelines and that he never implied that appellant had the heaviest workload in her unit, but that she actually had the least amount of territory to cover.

In an undated letter, Ms. Weisiger stated that she witnessed the July 3, 2003 discussion between appellant and Mr. Wilson and that he addressed appellant in a calm manner, never raising his voice. She stated that Mr. Wilson explained to appellant why he did not accept her personal leave request. Ms. Weisiger added that appellant was clearly agitated and did most of the talking until she stated that she needed to take a pill and left.

In a July 9, 2003 report, Dr. Tamella Trulson, a psychiatrist, stated that she had treated appellant since 1997 for a work-related injury to her mental health. She noted that appellant had done well for several years until the prior month when she started to experience a recurrence of anxiety from working with a new supervisor who was difficult to please and intimidating. Dr. Trulson diagnosed a recurrence of her work-related mental health injury with symptoms consistent with adjustment disorder with anxious mood.

In an October 15, 2003 decision, the Office denied appellant's claim finding she failed to establish a compensable employment factor.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment wrongly denied leave and improperly assigned work duties, the Board finds that these allegations relate to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although the handling of leave requests and the assignment of work duties are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment on the part of her supervisor contributed to her emotional condition. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹² In the present case, the employing establishment denied that appellant was subjected to

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

harassment and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor.¹³ Appellant alleged that Mr. Wilson made statements which she believed constituted harassment and discrimination, but she provided no supporting evidence, such as witness statements, to establish that the statements actually were made. Ms. Weisiger's statement refuted appellant's allegations that Mr. Wilson spoke in an intimidating or accusatory way.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.¹⁵ In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. However, in the present case, appellant does not allege that her workload caused her emotional condition. Rather, she alleged it was how her supervisor responded to how she managed her workload that caused her stress.

Appellant expressed dissatisfaction working with Mr. Wilson because she felt his body language and attitude were intimidating and because he was an unsafe manager. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁶ The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.¹⁷

Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁸ Appellant has alleged that her supervisor spoke to her in an intimidating way but she failed to submit supporting evidence, such as a witness statement. Moreover, Mr. Wilson denied speaking in an intimidating or accusatory manner and Ms. Weisiger supported his position.

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁶ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁷ *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

¹⁸ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁹

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).